United Nations A/73/380

General Assembly

Distr.: General
13 September 2018

Original: English

**Seventy-third session**
Item 74 (c) of the provisional agenda*
**Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives**

# Situation of human rights in Belarus**

## Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in Belarus, Miklos Haraszti, submitted in accordance with Human Rights Council resolution 35/27.

* A/73/150.

** The present report was submitted after the deadline to take into account the latest developments regarding amendments to the law on mass media.

18-15235 (E) 021018

Please recycle

# Report of the Special Rapporteur on the situation of human rights in Belarus

*Summary*

The present report is submitted by the Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, in accordance with Human Rights Council resolution 35/27. It is his concluding report after six years of serving as the Rapporteur. In the report, he warns, in detail, of the further deterioration of the right to freedom of expression, following recent legal changes that practically abolish the relative liberty of online communications. He also provides a general overview of the situation with regard to other rights. The Rapporteur welcomes the continuation of the mandate decided by the Human Rights Council in June and expresses his gratitude to the brave human rights community of Belarus, international civil society groups, the States represented in the Council and the Office of the United Nations High Commissioner for Human Rights for their support which made his work possible.

# I. Introduction

## A. Background

1. The Human Rights Council established the mandate of the Special Rapporteur on the situation of human rights in Belarus in its resolution 20/13 following the violent response of the authorities of Belarus to mass protests in the aftermath of the presidential elections of 2010, among other reasons. The Special Rapporteur assumed his functions on 1 November 2012. On 6 July 2018, in its resolution 38/14, the Council extended the mandate for one year. The present report is the final report of the current mandate holder to the General Assembly.

2. During the first six years of existence of the mandate, the Special Rapporteur analysed the situation of human rights in Belarus in the light of both the country's legal framework and the actions of the State apparatus. The entrenched and systemic violations of human rights as described in 2011 by the then United Nations High Commissioner for Human Rights, Navi Pillay, in her report to the Human Rights Council (A/HRC/20/8) unfortunately remain unchanged; as the present report will show, they have deteriorated in some key respects.

3. The situation of civil and political rights, in particular, continued to be marked by an overall oppressive set of laws and a chilling atmosphere deliberately conducive to self-censorship, regularly reinvigorated by sometimes violent, repressive actions by State officials. As the President has achieved absolute power over the three branches of the State (see A/72/493) during the past 22 years, Belarusian society has been forced to accommodate itself to a systemic lack of civil and political liberties, which in turn also negatively affects the situation of economic, social and cultural rights.

4. The cyclically recurring heavy crackdowns on peaceful demonstrators, the harassment of journalists and of human rights defenders and the frequent arrests of political opponents constitute the retaliatory, punitive part of human rights violations. The underlying oppressive legal framework is also designed to repress any form of expression of dissent, and to prevent or paralyse public debate not only on civic and political issues but also on economic and social ones, such as employment opportunities, wages and pensions, addiction, trafficking and corruption.

5. One of the most important human rights is the right to freedom of expression, which itself is comprised of several seminal liberties, such as the independence of media outlets from each other and from a central authority, resulting in pluralism of the media; freedom of uninhibited public exchange of differing opinions; freedom of information with regard to data of public interest; and the right to connect through any media and regardless of frontiers. It is hard to overestimate the importance of free expression for the enjoyment of all other rights.

6. Nevertheless, journalists in Belarus have for decades been working under conditions which do not match the basic standards for their vocation. Freedom of expression has been one of the human rights areas that has been deteriorating on a constant basis. In view of this, the Special Rapporteur, in the present report, will extend his previous analyses on the state of the right to free speech (see especially A/70/313). Several other human rights mechanisms have denounced the administrative hurdles and the oftentimes physical repression journalists face when conducting their professional activities.

7. The wave of searches and arrests of independent journalists and publishers on 7 and 8 August 2018 is the most recent warning from the authorities to anyone who wants to conduct independent analytical work on Belarusian policies. The raids and

temporary arrests were conducted with the same goal that underpinned the amendments to the law on mass media passed on 14 June 2018, practically eliminating the last remnants of freedom of expression online, after decades of the absence of that freedom in the print and broadcast media.[1] In the above-mentioned 2011 report, the United Nations High Commissioner for Human Rights had asked that Internet control measures be minimal and indicated that regulations should not lead to censorship: seven years later, Belarus is going in exactly the opposite direction.

8. The August crackdown targeting journalists followed raids against peaceful demonstrators on the occasion of Freedom Day, on 25 March. More than 110 individuals were arbitrarily arrested and detained. The year before, in February and March 2017, several hundred Belarusians who were protesting against social policies and corruption were brutally arrested and arbitrarily detained, together with journalists and bloggers, including foreigners.

9. The consolidation of power by the President and his Administration coincided with the expansion of the Internet worldwide. As in most countries, the Internet developed gradually in Belarus, from the mid-1990s onwards. It is now estimated that more than 5 million Belarusians regularly go on line.[2]

10. The Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion has been documenting the evolution of the attitude of States towards the Internet and describing the phenomenon of surveillance and blockades in a detailed manner (see A/HRC/17/27 and A/HRC/23/40). Equally in democracies and in authoritarian regimes, the Internet has become a key feature of the freedom of speech in all its aspects, especially through its facilitation of the freedom to connect. The Internet has also been seen, however, as threatening by Governments desiring to restrict the openness of public debates.

11. In Belarus in recent decades, the Internet has remained the only arena where individuals could debate relatively freely, without fearing repression for expressing critical views regarding State policies.

12. The amendments to the law on mass media, especially with regard to Internet-hosted media, adopted by the Parliament on 14 June 2018 complete the State's grip on public speech.

13. The regime for the enjoyment of human rights is therefore a permission-based one; however, the very definition of such a regime entails that the enjoyment of such rights must not be dependent on Government approval, but rather should be subject only to protection by the Government. The regime for the enjoyment of human rights that would comply with the otherwise necessary administrative and other legitimate purposes of States, including the efficient protection of the enjoyment of those rights, is the so-called notification-based system, whereby the administration has knowledge of but not jurisdiction over the aforementioned activities. A regime that requires authorization and is based on permission, a prime tool for oppression of the enjoyment of basic rights, had not been applicable to the online debate until the amendments were passed.

14. With this move, the authorities of Belarus demonstrate once again that the rhetoric about alleged improvements in the situation of human rights in Belarus is contradicted by the reality on the ground and in the legal framework.

[1] Office of the United Nations High Commissioner for Human Rights, "Belarus cracks down on journalists and publishers as oppressive new media laws bite, UN expert warns". Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23440&LangID=E.

[2] Freedom House, "Freedom on the Net 2017: Belarus country profile". Available at https://freedomhouse.org/report/freedom-net/2017/belarus.

15. The absence of enjoyment of the right to freedom of expression carries adverse and blatantly visible effects during election periods (prior, during and after the polls are held). Informed choice, a precondition of free and fair elections, has been absent in all elections during the tenure of the incumbent administration, transforming elections into an orchestrated symbolic approval of the status quo. As Belarus will hold elections in 2019, the Special Rapporteur urges the international community to continue monitoring the situation of election-related human rights, including freedom of speech and media freedom, and to demand positive steps.

16. The period of effectiveness of the inter-agency action plan[3] adopted in October 2016, to implement a selected set of recommendations accepted by the Government during the universal periodic review of Belarus and the recommendations of some treaty bodies, will come to an end in 2019. The Plan has been repeatedly presented as a systemic response to ensure the enjoyment of all human rights in Belarus. The Special Rapporteur provided a detailed analysis of the plan in his report to the Human Rights Council in 2017 (A/HRC/35/40 and A/HRC/35/40/Corr.1). While recognizing the efforts put forth by some State officials in preparing the Plan and ensuring its endorsement by the presidential Administration, the Special Rapporteur questions the relevance of the plan owing to the near total absence of civil and political rights in it, despite the recognition by the Minister for Foreign Affairs of the indivisibility of human rights.[4]

17. The Special Rapporteur can list only a few of the measures taken by the authorities of Belarus regarding the human rights agenda over the past six years: the ratification of the Convention on the Rights of Persons with Disabilities in 2016 (Belarus being the last European State to ratify the treaty), and the authorization granted to two members of the opposition to enter Parliament after the elections of September 2016. Belarus does not recognize the mandate of the Special Rapporteur and refuses to cooperate with it. The country still has not issued a standing invitation to all special procedures, and the following mandates are still waiting for an answer: freedom of expression; freedom of assembly; human rights defenders; torture; and enforced disappearance.

18. Following the submission of its report, Belarus is to be reviewed by the Human Rights Committee at its 124th session, which begins on 8 October 2018. It will have been 21 years since the Committee last reviewed the compliance of Belarus with its obligations under the International Covenant on Civil and Political Rights.

19. In May 2018, the Committee against Torture assessed the level of compliance of Belarus with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The concluding observations (CAT/C/BLR/CO/5) of the Committee show that no tangible progress was achieved on an issue that has been underlined by various mechanisms, despite numerous concrete recommendations to put an end to ill-treatment and torture by police and prison officials.

## B. Methodology

20. During his entire mandate, the Special Rapporteur did not enjoy cooperation from the authorities of Belarus. Therefore, apart from publicly available official documents, he has relied on information from various sources, including civil society actors inside and outside the country, international and regional human rights mechanisms and the diplomatic community.

[3] Available at http://mfa.gov.by/upload/doc/plan_all_eng.pdf.

[4] http://mfa.gov.by/en/organizations/human_rights.

21. The Special Rapporteur regrets that the Government does not cooperate with the mandate holder, even on issues of mutual concern.

## II. Continued tightening of restrictions on freedom of expression

22. For more than 20 years, the State apparatus of Belarus has tightly restricted the freedom of expression and the media. Free public debate, as well as the work of independent journalists and all areas of societal communications, have been subordinated to a rigidly oppressive legal framework and governmental practice, despite the State having committed itself to maintaining free speech both constitutionally and in international human rights treaties. The tightening of the space for expression is driven equally by self-censorship, that is, the fear of crossing either a written or an unknown line as arbitrarily interpreted by the Government.

### A. International obligations and observations

23. Belarus, like any other Member State of the United Nations or participating State of the Organization for Security and Cooperation in Europe (OSCE), is obliged to ensure freedom of expression through the promotion of, among other means, media diversity and independence, as well as through access to information, including through the Internet (see A/HRC/38/35, para 6). In addition, the Human Rights Council proclaimed that restrictions on the right to freedom of expression should never be applied to discussions of Government policies and political debate, including engaging in election campaigns, reporting on human rights; Government activities and corruption involving Government officials; peaceful demonstrations; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups (see Human Rights Council resolution 12/16, para. 5 (p) (i)).

24. The Human Rights Committee has stated very clearly that no one may be penalized, harassed, intimidated or stigmatized for holding an opinion, as any form of effort to coerce the holding or not holding of any opinion is prohibited by article 19 of the International Covenant on Civil and Political Rights (see general comment No. 34 (2011) on article 19: freedoms of opinion and expression, para. 10). In that sense, the right to hold an opinion is absolute.

25. While there is no specific right to anonymity spelled out in the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights, the banning of anonymity was intentionally left out of the Covenant, precisely because anonymity might at times be useful for the protection of authors of views, and consequently for the protection of the right to freedom of opinion and expression. (For more information on anonymity, see A/HRC/29/32). The Special Rapporteur recalls that the Covenant (art. 17 (2)) obliges States to protect privacy against *unlawful and arbitrary* interference and attacks.

26. The regulations concerning the media in Belarus have been criticized by many human rights mechanisms for many years. In his 2015 report to the General Assembly (see A/70/313, para. 33 and following), the Special Rapporteur analysed the 2008 law on mass media. It established very tight State control over channels of communication by ordering a cumbersome registration process for any media outlet. It also provided for the possibility of withdrawing licences obtained after registration on grounds which are vague enough to justify any closure. At that time, the OSCE Representative on Freedom of the Media warned that the adoption of that law would open the door to future restrictive regulations on Internet-based media. In 2014, amendments to the law had already tightened restrictions on the freedom of online expression by

extending the control of the Government, notably with regard to content, warnings and suspension of online communications. Ten years after the adoption of the law, the latest amendments passed in June 2018 complete the imposition of State control over the Internet in Belarus.

27. Under the International Covenant on Civil and Political Rights (art. 19 (3)), the only restrictions on the right to freedom of expression must be those which are provided by law and are necessary and legitimate to protect the rights or reputation of others, national security or public order, public health or morals. They should be proven the least restrictive and most proportionate means to achieve the goal of the restriction. In addition, the restrictions must be applied by a body in a manner that is neither arbitrary nor discriminatory and with adequate safeguards against abuse, independently of any political, commercial or other unwarranted influences. It is obvious that these restriction safeguards apply to offline and online media alike. From the consecutive legislative and institutional measures taken by the incumbent administration over decades, including without prejudging the assessment the Human Rights Committee may make of the recent legal amendments, it appears prima facie that the latter are a clear breach of the limitations safeguards imposed by the Covenant, at least as far as the necessity, legitimacy and proportionality requirements are concerned.

28. The Human Rights Committee has defined the activity of journalism as a "function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere" (see general comment No. 34, para. 44). The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression extends the definition of journalists to "so-called 'citizen journalists' when they momentarily play that role" (see A/HRC/20/17, para. 4) and "who play an increasingly important role by documenting and disseminating news" as it unfolds on the ground (ibid., para. 61). The Special Rapporteur on the right to privacy explained that the Internet having enabled normal citizens to publish content at any time had "empowered citizens in many ways, especially in situations where censorship or other obstacles are bypassed or where technology facilitates freedom of expression in a way than enhances democracy in society" (see A/HRC/31/64, para. 13).

29. The Special Rapporteur on freedom of expression affirmed that journalism, as defined by the Human Rights Committee, is a key element in a society "as it provides individuals and society as a whole with the necessary information to allow them to develop their own thoughts and to freely draw their own conclusions and opinions" (see A/HRC/20/17, para. 3). Ad contrario, when journalism is so severely controlled by the State and by the distribution of print media under State monopoly, one may conclude that the conditions for the right to seek and receive information are not fulfilled, thus violating the right to hold an opinion.

30. The right to hold an opinion is enshrined in article 19 of the Universal Declaration of Human Rights, which stipulates that everyone shall have the freedom to hold opinions without interference. The International Covenant on Civil and Political Rights contains the same definition in its article 19 (1). A number of other international treaties to which Belarus is also a State party contain such a right, for example, the Convention on the Rights of the Child (arts. 12 and 13) and the Convention on the Rights of Persons with Disabilities (art. 21).

31. The Human Rights Committee, in its general comment No. 34, explained that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, and that they are essential for any society, as they constitute the foundation stone for every free and democratic society. The Committee insists that both freedoms are closely related, with freedom of expression providing

the vehicle for the exchange and development of opinions. As such, the freedom of opinion cannot be derogated, even during a state of emergency.

32. The Human Rights Committee further comments that "a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression.... It constitutes one of the cornerstones of a democratic society."

## B. Brief history of the freedom of expression, in particular of the media

33. Since a brief period of a few years in the 1990s, after Belarus achieved independence, the space for independent media has radically shrunk. In fact, the State-controlled system that prevailed during Soviet times had not fully disappeared even during the initial years of independence, at least not in the minds of politicians. For instance, Prime Minister Vyacheslav Kebich mentioned that "the Government provides credits to the newspapers and magazines that take the correct positions. Why provide a credit to a newspaper that tries to undermine stability in our country? I shall support all the press with the exception of those publications that stand against the Government." In 1993, an expert group created by the Ministry of Information was tasked with drafting "principles for the development of an information space in Belarus".[5]

34. In the name of stability and the avoidance of pressure from markets or foreign influences, President Alyaksandr Lukashenko enforced a system of media governance that was radically centred on control through a two-track approach: the building up of a State monopoly over mass media, and the silencing of dissenting media. His administration installed a media system that in itself is antithetical to any notion of media pluralism. Belarus is the only country in Europe where there are no privately owned nationwide broadcasting outlets. Licensing and registration of any media start-ups, extending far beyond just broadcast outlets, are governmental prerogatives, without even a modicum of societal participation in the evaluation and adjudication process, and without any legal remedy against the decisions. All externalities of the print, broadcasting and online media, such as printing, distribution, subscription, frequency and apparatuses for transmitting signals, and infrastructure for the provision of Internet service, are State-owned or, in the best case, State-directed and State-dependent to the level that their functioning is indistinguishable from State ownership.

35. The Government, in particular the Ministry of Information and a dozen other entities, has the right to monitor and evaluate media content, especially for what the laws call "misuse of freedom of speech". According to article 38 of the law on mass media, the only information to be distributed by mass media must come from registered organizations, and information must not be deemed harmful to the national interests of Belarus.

36. The authorities have established a non-judicial system of sanctions for those media outlets which circulate information from unregistered sources or publish unwelcome content. After two warnings from the Ministry of Information, the media outlet may be closed down through suspension or withdrawal of its registration by the same authority that issued the warnings. The Ministry may also at any time order a so-called re-registration of publishers and information distributors, both system-wide and individually, thus pushing them into a state of uncertainty regarding their

[5] From *Belarusskaya Niva*, 9 June 1992 (quoted in Oleg Manaev, "Belarus: new principles, new broadcasting bill", *Media Law & Policy*, 30 April 1994).

continued existence. This system has automated and deeply entrenched self-censorship in the media.

37. It is important to note that these signs of a high level of State involvement in the media are no longer remnants of Soviet ways, nor are they interpretable as a developmental hold-up related to a protracted transition to democratization of the media. This media system is the result of carefully designed and systematically executed governmental policies following a period when the nation became acquainted with the basic democratic principles regarding freedom of expression. It serves as a transition from democracy, not to it, purposely targeting media pluralism and any obstacles to the distribution of governmental propaganda.

38. State protection and support applies to loyal media only. In 1994, a draft broadcasting bill called for the mass media to "pursue a policy of strengthening public consent, avoiding extremist articles and abstaining from utterances that harm the spiritual and moral health of the masses".[6] Just after he was elected, President Lukashenko stated that he supported a free press as long as it was responsible and helped his presidency. A press law was passed that nominally prohibited press monopolies but maintained a virtual State monopoly of the media.[7] Two years later, the president signed a decree making editors-in-chief of State-supported newspapers official State employees.[8] The most recent statement of President Lukashenko is in exactly the same vein: by protecting the information field and through the control of social media, he claims to be combating fake news.[9]

39. Restrictions on the working conditions of journalists started in 1997 with denial of accreditation to journalists critical of the regime. In July of that year, a decree of the Council of Ministers required all foreign media correspondents to apply for reaccreditation.[8] Ever since, the conditions for becoming and remaining a journalist in Belarus, regardless of whether the journalist contributes to an outlet based in Belarus or one that is foreign-owned, are strictly controlled by the State through a cumbersome registration process combined with institutionalized harassment. The authorities' practical ownership of nationwide media, combined with their control of the few private media outlets, instils a climate of fear, resulting in self-censorship or abandonment of the profession.

## C. Recent amendments to the law on mass media and to the code of administrative procedures

40. On 14 June 2018, the House of Representatives of Belarus adopted in a second reading amendments to the law on mass media, which in effect quash the last space in which free speech was relatively possible: Internet-based media and communication. These amendments are the final step by the authorities to perfect their control over what can be said and written in the public area. This recent move affects not only the right of citizens to express themselves but also the right of individuals to hold an opinion.

---

[6] Monroe E. Price, "The Market for loyalties: electronic media and the global Competition for allegiances", *Yale Law Journal*, vol. 104, No. 3 (1994), pp. 667–705.

[7] United States Department of State, *U.S. Department of State Country Report on Human Rights Practices 1994 — Belarus* (30 January 1995). Available at www.refworld.org/docid/3ae6aa4118.html.

[8] United States Department of State, *U.S. Department of State Country Report on Human Rights Practices 1997 — Belarus* (30 January 1998). Available at www.refworld.org/docid/3ae6aa830.html.

[9] https://naviny.by/new/20180702/1530541798-lukashenko-sfabrikovannye-novosti-i-lozhnye-orientiry-stali-glavnym-oruzhiem.

41. The Special Rapporteur, along with others, warned about the amendments when they were discussed during their first reading. Despite the many criticisms raised against the proposal, the House of Representatives adopted them in a second reading. They will enter into force on 1 December 2018.

42. The amendments altogether eliminate the last vestiges of freedom of speech in Belarus. Any individual who wishes to comment on articles, vi'eos, blog postings or any content on social media will need to be identified by the owners of any online discussion platform. In addition, the Ministry of Information may request the owners of such platforms to provide information on the authors of comments within five working days. The sites have to r tain the actual communications and all related information, not only the metadata, and do so for a much longer period than five days. The rationale is an alleged need to prevent the dissemination of untruthful information that may harm the State or public interest, or defame individuals or legal entities. As this new requirement is impossible for owners of online resources to implement in practice, such owners may decide to close the "comment" feature of their articles, thus further eliminating any possibility of expression on issues that the authorities may see as problematic. It is unknown how these vague rules would or could be applied on social media sites such as Facebook, where they seem to be technically inapplicable by the service providers or the users, at least based on the habits and assumed behavioural rationales of such services to date. At the same time, they could not be enforced by the authorities except for in an arbitrary, selective manner. A radical self-censorial effect is clearly predictable, and might be the actual purpose of the regulation.

43. Putting an end to online anonymity, similar to any restriction based on vague grounds such as "State and public interest", has long been deemed by human rights experts as having a chilling effect. As with any such restrictions, the amendment may "result in individuals' de facto exclusion from vital social spheres ... exacerbating social inequalities" (see A/HRC/23/40 and A/HRC/23/40/Corr.1, para. 49). In the Belarusian context, where the legacy and offline media are already prevented from debating any cardinal political and social issues, forcing online resources to disclose information that they cannot gather means closing down any and all possibilities of debating governmental policies and actions. The key element of the provision is therefore not its specific argument about anonymity but its role in denying freedom of speech in society altogether.

44. Another amendment provides for the voluntary registration of online platforms, after which they will be legally treated as media and therefore submitted to the same restrictive rules and practices as the print and broadcast media. The Special Rapporteur recalls the purposefully cumbersome procedure for founding and operating print and other media outlets (see A/70/313). Most of the owners of online platforms will be even less able to meet the many requirements for registration.

45. The alternative to registration for media status, that is, not asking for such status or not receiving it, will subject online publications to a newly established set of fines of up to €500 for individuals and up to €5,000 for entities, introduced in the 2018 amendments to the law on administrative offences. Police will be authorized to conduct investigations, rather than the Ministry of Information, which normally conducts investigations that concern the traditional media.

46. The new version of the law on mass media also allows the authorities to stop online publications and block access to websites and blogs. The new element of the law is the prerogative of the administrative and law enforcement authority to decide to block such access, outside of any court decision and without the possibility of appeal.

47. The 2018 amendments ending the anonymity of online contributions necessarily affect the work of journalists in their capacities as both authors and subjects of comments. Practically banning anonymity or even just having responsibility for its correct handling in the media taken over by the State is harmful not only for the freedom of opinion but also for fact-finding. Investigative websites and sources that contribute to anti-corruption and anti-abuse journalism are doomed if their actual targets, the authorities, can enforce unrestricted data retention and can confiscate data at will. This legal development in hindering the work of independent journalists in Belarus comes in addition to the continuing harassment denounced by human rights mechanisms for years. The Special Rapporteur echoes the findings of the Special Rapporteur on freedom of expression: journalists are targeted for disseminating "inconvenient" information; the problem lies in the inability or unwillingness of Governments to ensure their protection (see A/HRC/20/17, para. 92).

48. The Belarusian legal framework on media makes an artificial distinction between national and non-national mass media (art. 1 of the law on mass media). Only journalists benefiting from a State-approved working contract with a media company based in a foreign country can work for such companies; without such a contract, journalists also cannot obtain accreditation, which is another layer of the arbitrary and selective permission-based regime for those who work for foreign-owned media, and endangers all freelancers and online contributors.

49. The State does not treat accreditation in accordance with international standards, i.e. as a means to facilitate access for journalists when time, space or security aspects need consideration. Instead, accreditation is dealt with as if it were a work permit. This regulation is two-edged: it hinders both the foreign-owned media and their Belarusian contributors. Freelancers therefore cannot work for foreign mass media outlets by submitting articles, videos or analyses. If they do, they are in violation of the law and may receive warnings and fines, their residence may be searched and their material may be seized. The OSCE Representative on Freedom of the Media has denounced discrimination against and harassment of those journalists who do not have accreditation, as such accreditation "should not be a license to work" and the lack of it should not restrict their ability to "express themselves freely".[10]

## D. The fate of journalism, including online journalism

50. The situation in 2017 was described as the worst year for independent journalists in Belarus since 2011.[11]

51. At least 107 journalists faced repression and harassment: arbitrary detention, beatings of those arrested, police searches of private apartments, huge fines, official warnings from public prosecutors' offices and seizure and destruction of professional technical equipment. A cameraman for Poland-based Belsat TV, Aliaksandr Barazenka, announced a hunger strike for the period of his 15 days of arrest on charges of hooliganism, committed allegedly while he was being arrested. His decision followed a trial in which the judge accepted a policeman's testimony over the video footage of his arrest.

52. Throughout 2017, the Special Rapporteur continued to receive reports of intense harassment. In May alone, nine independent journalists were fined, for either

[10] Organization for Security and Cooperation in Europe (OSCE), "OSCE representative calls on Belarusian authorities to repeal accreditation requirements for journalists", 17 June 2014. Available at www.osce.org/fom/119875.

[11] Belarusian Association of Journalists, "Mass media in Belarus 2017". Available at https://baj.by/sites/default/files/analytics/files/media_monitoring_2017_eng.pdf.

contributing to non-registered media or covering non-authorized protests.[12] In June, a journalist who was covering a peaceful action by lesbian, gay, bisexual and transgender activists (leaving flowers and painting rainbow-coloured footprints on the pavement) was also fined.[13] Contributors to Belsat TV were warned that their belongings (car and phone) would be seized if they did not pay their fines within two weeks.[14] In August, journalist Larysa Shchyrakova was fined for cooperating with Belsat TV without accreditation.[15]

53. The first months of 2018, marked by the Freedom Day protests, were a repeat of the March 2017 wave of arrests and intimidation. Also, in line with the growing concern of the authorities about online journalism, bloggers emerged as a frequent target of their punitive drive. On 23 July, a blogger based in Brest was charged with insult in a public statement; he had criticized the city and regional authorities.[16] His home was searched, a computer was seized and he was detained for three days. Another blogger from the same city had his home searched on 8 August because he had "insulted a police officer".[17] He was detained during the search.

54. The Special Rapporteur on the situation of human rights in Belarus, along with the Special Rapporteur on freedom of expression, had to issue a statement on 10 August warning of the immediate deterioration of the situation of journalists in the wake of the legal amendments.[18] On 7 and 8 August, the authorities searched premises and blocked the operation of several independent media outlets, among them the online portal Tut.by and the only independent news agency in Belarus, BelaPAN. At least 16 journalists were arrested, including the editor-in-chief of Tut.by, Maryna Zolatava, and journalists Ulyiana Babayed, Hanna Kaltyhina and Halina Ulasik. BelaPAN reporter Tatsyana Korovenkova was also detained. The authorities cited violation of the penal code, which criminalizes illegal access to computer information that may cause significant harm. In fact, the journalists occasionally used each other's passwords to access the news service of the State-owned BelTA news agency. The allegation of "significant harm" was also disingenuous given that BelTA is financed by the State and no part of its revenues comes from local subscriptions. At the time of writing of the present report, the arrested had been set free but nine of them remained under investigation, and the computer equipment seized from their homes and newsrooms remained in police custody. On 27 August, all but one of them were banned from travelling abroad.

[12] Viasna, "Human rights situation in Belarus: May 2018". Available at http://spring96.org/en/news/90048.

[13] https://euroradio.by/ru/dvoih-uchastnikov-lgbt-performansa-vozle-mvd-oshtrafovali-po-735-rublya.

[14] Belarusian Association of Journalists, "Belsat journalists to lose car and property if they don't pay fines", 16 July 2018. Available at https://baj.by/en/content/belsat-journalists-lose-car-and-property-if-they-dont-pay-fines.

[15] Belarusian Association of Journalists, "Mass media in Belarus", e-newsletter, vol. 2, No. 52 (May–July 2017). Available at https://baj.by/sites/default/files/analytics/files/smi-02522017-en.pdf.

[16] https://www.svaboda.org/a/29388515.html; and Reporters without Borders, "Belarusian authorities hound critical video blogger", 3 August 2018, available at https://rsf.org/en/news/belarusian-authorities-hound-critical-video-blogger.

[17] http://belsat.eu/ru/news/obysk-u-brestskogo-blogera-aleksandra-kabanova.

[18] Office of the United Nations High Commissioner for Human Rights, "Belarus cracks down on journalists and publishers as oppressive new media laws bite, UN expert warns" (see footnote 1).

### E. Freedom of expression and the media in the inter-agency action plan

55. The Special Rapporteur provided an assessment of the provisions of the Belarusian inter-agency plan related to freedom of expression and freedom of the media in a previous report (see A/HRC/35/40, paras. 41–43). Disappointingly, only three activities that relate to the media were foreseen, namely: the monitoring of compliance with the legislation on the mass media; the conduct of board members of media outlets and journalists to promote the right to the freedom of speech at international events; and the development and implementation of educational programmes for journalists on interconfessional and inter-ethnic relations. None of these activities address the systemic issues raised by human rights mechanisms for years, namely, the heavy State control through the registration, licensing, warning, accreditation and other systems, the State's domination of the media landscape and the harassment of independent and non-accredited journalists.

56. The Special Rapporteur understands from the progress report issued by the Ministry of Foreign Affairs on the implementation of the inter-agency plan[19] that the Ministry of Information monitored media compliance with the law by issuing 17 warnings to seven media outlets and seven information resource bodies. The fact that the issuance of warnings is seen as a benchmark for the progress of media freedom is telling with regard to the way Belarusian authorities envisage this issue.

## III. Situation of political prisoners

57. The cyclical handling — arrest and release — of political prisoners in Belarus continues to rely on propagandistic and forged charges against dissenters and opposition political leaders. Tax evasion remains an allegation that has been instrumentalized, as has hooliganism and other violations of peace. The former chair of the United Civil Party was tried in August 2018 for having "violated the procedure for holding a mass event"; in fact, he participated in an unauthorized press conference.[20]

58. In a decision of 6 April 2018 (CCPR/C/122/D/2212/2012), the Human Rights Committee found that Belarus had violated the human rights of Andrei Sannikov, an opposition political candidate in the country's 2010 presidential elections, who submitted a complaint to the Committee in 2012. The Committee described him as a victim of torture and arbitrary arrest, and was of the view that he had also suffered arbitrary deprivation of liberty, privacy, the right to freedom of expression and the right to peaceful assembly on the ground of his political opinions.

59. The Special Rapporteur remains concerned by the existence of political prisoners in Belarus, deprived of their liberty for the sole reason of their ideas. One of them, Mikhail Zhamchuzhny, was sentenced to six-and-a-half years of imprisonment under a strict regime for "incitement to disclosure of official secrets" in July 2015. He remains in custody and was punished on 10 April 2018 with confinement for two months; in June 2018, he received his twenty-eighth penalty

[19] http://mfa.gov.by/upload/18.06.26_HR_report_2017.pdf.

[20] https://naviny.by/new/20180727/1532692670-lebedko-budut-sudit-za-press-konferenciyu-v-kuropatah.

since 2017.[21] The Special Rapporteur joins the call made by human rights organizations to the President, asking him to exonerate Zhamchuzhny and free him.[22]

60. The other prisoner of conscience is Dzmitry Palienka, an environmental and civil rights activist who was arbitrarily arrested on 29 April 2016, after participating in a peaceful demonstration to promote cycling.

# IV. Situation of other human rights, including economic and social rights

## A. Freedom of association

61. The concept of "registration" to authorize public speech also applies to association. Those who think alike and wish to act jointly for any cause are allowed to do so only if their entity is registered. Nevertheless, and just like for the media, such registration does not follow a notification procedure, but rather is a permission-based authorization.

62. Adding to the selective, arbitrary and politicized authorization system, Belarus de jure criminalizes any disregard of the permission process. It is then up to the authorities to turn the de jure criminalization into a de facto one. A famous case in point is the fate of Viasna, one the most dedicated human rights organizations in Belarus, which year after year has requested registration in vain. It is the bravery of its members and leaders, such as Ales Bialiatski, who also suffered four years of prison time, that civil society still defies the prohibitive conditions. The goal of such regulations has basically been achieved, though. The net result is a freeze of society's collective civic actions. This is all the more deplorable given that many non-governmental organizations (NGOs) could assist the population in humanitarian areas in which the State's response is either non-existent or inefficient.

63. Freedom of association in Belarus is governed by the law on public gatherings, which was amended in 2014. The Act provides for a cumbersome, rigid system of registration of organizations, piloted by the Ministry of Justice. The level of complexity and amount of paperwork allows the Ministry to use petty grounds to deny registration in an arbitrary manner, including, for instance, for using the wrong font to fill in the forms.[23] It also allows the justice system to terminate any association that has not submitted the required annual reports for three consecutive years. State-based harassment also takes the form of financial discrimination, as public associations have to pay much higher fees for their registration than commercial associations do. Owing to the state of the rule of law in Belarus, appeals against such denials are doomed to fail.

64. The main recent development regarding freedom of association is the advertised plan of the Council of Ministers to abolish article 193-1 of the criminal code, introduced in 2005 and which criminalizes participation in the activities of non-registered organizations. This article has been long described by human rights defenders and human rights mechanisms alike as a de jure violation of the freedom

[21] Viasna, "Human rights situation in Belarus: June 2018". Available at http://spring96.org/en/news/90250.

[22] Viasna, "Human rights situation in Belarus: July 2018". Available at http://spring96.org/en/news/90469.

[23] Alternative report by the national human rights coalition on implementation of the International Covenant on Civil and Political Rights in Belarus, presented to the Human Rights Committee at its 124th session. Available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_E.pdf.

of association. The article was used at least 18 times between 2005 and 2010 to sentence individuals. Since 2010, the article has not been used to sentence, but rather to warn, individuals, in particular political leaders.

65. The abolishment of criminalization would be replaced, however, with a system of administrative sanctions, with descriptions of the transgressions copied and pasted from the criminal code and the same arbitrary jurisdiction provided if the fines should be meted out. It is noteworthy that fines and the subsequent confiscations, including of livelihood equipment and even apartments in many cases, are more harmful for the lives of the victims then the penal procedure has been. Hence, legal impediments to the enjoyment of the freedom of association would still exist, ensuring continued State control over unauthorized activities in Belarus.

66. The Special Rapporteur has frequently mentioned the difficulties for individuals to form groups, register and work legally on issues that are not acknowledged by the authorities. This is even more acute when it comes to the registration of political parties. Since the creation of the mandate of the Special Rapporteur, only one political movement (not a party) was registered: the "Tell the Truth" group, and it will not have the possibility to present candidates for elections. On 25 May 2018, the Belarusian Christian Democracy Party filed an appeal to the Supreme Court against the seventh decision from the Ministry of Justice to refuse its registration. The last registration of a political party in Belarus was in 2000.

67. An additional burden on associations was introduced by Presidential Decree No. 5 of 31 August 2015. Any foreign donation must first be registered by the presidential office (through the department of humanitarian affairs). One may wonder why it is the Presidential Administration that is in charge of this registration, and not the Ministry of Justice or the Ministry of Finance. Donations that are made to organizations the goals of which are not on a pre-existing list may be confiscated by the administration. The promotion and protection of human rights are obviously not on that list; neither are gender quality nor a long list of other important social endeavours.

## B. Freedom of peaceful assembly

68. As is the case for the tightening of restrictions on the freedom of association, the authorities in Belarus have developed a similar oppressive set of laws managing the freedom to peacefully gather. The regular crackdowns on peaceful demonstrators, the last occurrence of which was on the occasion of Freedom Day (25 March) this year, join the oppressive administrative and penal rules in silencing the public expression of dissenting views.

69. The Special Rapporteur, along with many other human rights actors and mechanisms, expressed outrage at the wave of repression of peaceful demonstrations against social policies in 2017. In particular, the protest marches were against the application of Presidential Decree No. 3, which labelled those not working full time as "social parasites" and fined those not registered as working a minimum of 183 days per year. The magnitude of the arrests and detentions — several hundred individuals — was aimed at creating fear with regard to future mass demonstrations, thus curtailing the freedom of expression. In fact, such repression has occurred cyclically over the years, and is meant as an educational reminder for new generations regarding the unchanged regulations.

70. The freedom of assembly in Belarus is governed by the law on mass events of 2011.[24] The European Commission for Democracy through Law ("Venice

[24] Available at http://by.prava-by.info/wp-content/uploads/2016/04/default.pdf.

Commission") criticized the law for not being compliant with international standards, stating that the conditions set for the freedom of peaceful assembly were deliberately restrictive. Amendments adopted in July of this year, which shall enter into force in February 2019, have added a notification procedure for those gatherings which are to take place in areas specifically designated by the authorities. Any event that will take place in another area will still require permission from the authorities, and disregard of the process or the resolution will carry the same consequences as before. The amendments also introduced an additional burden on journalists, who will be liable if they disseminate any information on the place and date of such events in the media, including through the Internet, without having submitted a notification in the first place.[25]

71. In 2018, the intensity with which the punitive approach to freedom of assembly is applied has not relented, with retaliation occurring for mere presence at an unauthorized gathering, and even for protests by one person.

72. In July 2018, an activist received two fines and faced justice three times for having violated the procedure for organizing and holding mass events. She had posted online three pictures of herself holding a sign in front of the Ministry of Internal Affairs, the House of the Government and the KGB headquarters, in protest against the public statement by the Ministry describing same-sex relationships as "fake". Amnesty International described the sentence as a "new low" for the authorities.[26] She was not apprehended at the actual locations, indicating that her presence on Internet platforms fell under the law on mass events, which is clearly meant to regulate away the new freedom to connect online.

## C. Torture and ill-treatment, and disappearances

73. Violations of the right to physical integrity and the right to life, together with enforced disappearance, represent the culmination of attempts to silence critical voices.

74. The Special Rapporteur recalls the cases of disappeared prominent figures of the opposition. As at the date of submission of the present report, the authorities had not made any progress in the investigations; however, the absence of communication on these unresolved cases has not erased them from the collective memory.

75. Research by human rights monitors, and even admissions by officials, had provided credible reports that senior officials in the Lukashenko administration were involved in the 1999 disappearances of opposition figures Yury Zakharenko, Viktor Gonchar and Anatoly Krasovsky, and the July 2000 kidnapping of journalist Dimitry Zavadsky. Members of a "death squad" allegedly organized by the then Minister of the Interior were convicted of the kidnapping of Zavadsky, although the trial did not address what happened to Zavadsky after the kidnapping. The Zakharenko, Gonchar and Krasovsky cases remain unresolved.

76. The Parliamentary Assembly of the Council of Europe concluded[27] that the authorities had failed to investigate those disappearances and had covered up the circumstances.

---

[25] https://www.svaboda.org/a/29390085.html.

[26] Amnesty International, "Belarus: new low as authorities slap solo LGBTI protester with fine for 'mass' protest", 16 July 2018. Available at www.amnesty.org/en/latest/news/2018/07/belarus-new-low-as-authorities-slap-solo-lgbti-protester-with-fine-for-mass-protest.

[27] Parliamentary Assembly of the Council of Europe, resolution 1371 (2004) and recommendation 1657 (2004), on disappeared persons in Belarus; and resolution 2172 (2017), on the situation in Belarus. Available at http://assembly.coe.int.

77. The Special Rapporteur recalls repeated incidences of independent journalists being found dead under suspicious circumstances. In 2004, independent journalist Veronika Cherkasova was found dead in her apartment with over 20 stab wounds; authorities suspended the related investigation in 2006. In 2005, independent journalist Vasily Grodnikov was found dead in his apartment under unexplained circumstances; authorities concluded that Grodnikov had died while intoxicated, and closed the case. In 2010, human rights observers contended that the apparent suicide of Aleh Byabenin, an independent journalist and member of the opposition, had in fact been staged. The Special Rapporteur is particularly worried about reports of death threats against Natalya Radzina, the editor of website Charter97.org.[28]

78. The last wave of massive ill-treatment happened during the protests of February and March 2017 against Presidential Decree No. 3 (see A/72/493, para. 63).

79. The Special Rapporteur notes that, on 23 March 2017, the Zavodski district court ruled that the mother and sister of Ihar Ptsichkin, who died in prison in August 2013, should receive financial compensation for the emotional distress caused by his death. Unfortunately, the Ministry of Interior filed an appeal to the Minsk city court, on the ground that the mother of the victim "had to assume that her son might die in prison".[29]

80. The Special Rapporteur continued to receive reports of ill-treatment, in particular by prison officials and officials of the Ministry of Interior. The latter seem to particularly target anarchists and artists: on 30 June, young participants in a rally had to stay on their knees with their hands on their heads for five hours.[30]

## D. Death penalty

81. Belarus remains the only country in Europe to have capital punishment in its criminal code and to also apply it.

82. Numerous round tables with foreign experts have taken place on the issue of abolishment, but an in-depth public, nationwide discussion prompted or supported by political will is still missing. In fact, the President himself closed all debate, as he declared that his decision to keep the death penalty as part of the judicial system of Belarus is actually a reflection of public will.[31] There are, however, numerous examples among States that have abolished the death penalty of States having taken the decision to eliminate the death penalty despite polls in favour of keeping it.

83. It seemed a positive development that the Supreme Court suspended the death sentences of Ihar Hershankou and Syamyon Berazhnoy in June 2018. According to reports, however, the appeals have been rejected. Ihar Hershankou went on a hunger strike in June 2018 and submitted a communication to the Human Rights Committee.

84. The Special Rapporteur urges the authorities to respect interim measures issued by the Human Rights Committee, to mark a break with the current practice of the authorities of ignoring such measures, as has been the case in 10 instances so far.

[28] Reporters without Borders, "Death threats against Belarusian journalist based in Poland", 26 July 2018. Available at https://rsf.org/en/news/death-threats-against-belarusian-journalist-based-poland.

[29] Viasna, "Interior Ministry disputes moral suffering in prison death case", 16 May 2017. Available at http://spring96.org/en/news/86951.

[30] Viasna, "Human rights situation in Belarus: July 2018".

[31] Address of the President of Belarus to the twenty-sixth session of the Organization for Security and Cooperation in Europe Parliamentary Assembly, 5 July 2017. Available at www.belarus.by/en/press-center/26-osce-pa-annual-session-minsk/address-of-belarus-president-alexander-lukashenko-to-osce-pa-plenary-session-in-minsk_i_0000060161.html.

85. At least two new executions in Belarus, of Viktar Liotau and Alyaksey Mikhalenia, have been conducted in secret, apparently in mid-May 2018. Two death sentences have been handed down this year, against Vyachaslau Sukharka and Alyaksandr Zhylnikau, after the Supreme Court overturned the life sentences handed down by the Minsk city court.

86. The only way to contest death sentences is not by appeal, which is nearly impossible through the judiciary, but to ask the president for a pardon (art. 84 of the Constitution). The sessions of the presidential pardons commission, which examines the requests, are by regulation open to public organizations and the media, but in practice such access is consistently denied.

87. Human rights mechanisms and especially the Committee against Torture have repeatedly stressed the suffering endured by the family members of executed individuals. The secrecy surrounding the executions and the silence of the authorities on the whereabouts of their bodies unnecessarily create pain and sorrow.

88. The Special Rapporteur was alarmed by the deportation of a national of the Islamic Republic of Iran, who may be subject to ill-treatment and the death penalty on the basis of apostasy following his conversion to Christianity. He had been living in Belarus for 25 years with his family.[32]

## E. Arbitrary arrest and detention

89. The handling of divergent opinions in Belarus is also managed through regular arrests and detention, often applied in an arbitrary manner on the basis of trumped-up charges. Journalists and activists, including environmental defenders, trade unionists and human rights defenders, are the typical targets of detention, which ranges from a couple of hours to several days and up to two weeks. Periodically, the authorities conduct mass arrests of journalists and activists, or even individuals peacefully protesting, as was the case in the spring of 2017. The most recent occurrence was the raid against media outlets in early August this year, during which the authorities arrested and detained at least 16 people. Those who filed complains of arbitrary arrest and detention, such as the correspondent for the German broadcast company Deutsche Welle, were not successful. The Special Rapporteur described this new wave of harassment as "sadly customary bogus criminalization of independent journalists" in Belarus.[33]

90. On 3 July 2018, about 30 individuals, including observers from the human rights centre Viasna, who were peacefully gathering to mark Independence Day, were detained for several hours and subsequently released without charge. The organizer of the rally, political opponent Nikolay Statkevich, was detained before he could reach the place where the meeting, which had not been authorized, was being held.[34]

91. The recent peaceful mobilization against the opening of a restaurant which hosts parties in the protected historical site of Kurapaty has particularly mobilized law enforcement and the judiciary At the end of June 2018, five activists were arrested and arbitrarily detained for 10 days in jail. Journalists working for Belsat TV who were covering the rally were also detained and fined for the "illegal production and

[32] Amnesty International, "Urgent action: Iranian in Belarus at risk of imminent deportation", 20 July 2018. Available at www.amnesty.org/download/Documents/EUR4988092018ENGLISH.pdf.

[33] Office of the United Nations High Commissioner for Human Rights, "Belarus cracks down on journalists and publishers as oppressive new media laws bite, UN expert warns" (see footnote 1).

[34] https://news.tut.by/economics/599246.html?utm_campaign=news-feed&utm_medium=rss&utm_source=rss-news&crnd=14751.

distribution of media products".[35] The situation in Kurapaty illustrates the deliberate absence of dialogue between the authorities, the business sector and civil society in Belarus. The State, which should be protecting national heritage at the same time that it creates economic opportunities, should facilitate negotiations and the finding of a solution. Instead, protesters and journalists are arbitrarily arrested, and used as a means of showing to the general public that protesting even for the respect of historical heritage can lead to problems.

92. In his previous report to the General Assembly, the Special Rapporteur mentioned the arbitrary detention and harassment of prominent trade unionists and members of trade unions, who had been involved in the demonstrations against Presidential Decree No. 3 in February and March 2017. Since August 2017, they have been consistently harassed and summoned to appear in court on trumped-up charges of tax evasion, a pretext that the authorities use frequently to silence political opponents. The criminal case against the Chair and the chief accountant of the Trade Union of Radio and Electronic Industry Workers, Henadz Fiadynich and Ihar Komlik, opened on 30 July 2018. They were both sentenced to four years of restricted freedom, without imprisonment and without confiscation of property but with a prohibition on holding managerial positions for five years.[36]

## F. Economic and social rights

93. The demonstrations of February and March 2017 illustrated the tensions that exist in Belarus, where about 80 per cent of the economy is State-controlled. The President refuses to privatize large portions of the economy.

94. The authorities frequently label workers making a living outside the State enterprises as "social parasites". The Committee on Economic, Social and Cultural Rights will review the situation of those rights in the coming year or two, as its pre-sessional working group is scheduled to adopt its list of issues prior to reporting during its sixty-third session, in October 2018.

95. The Special Rapporteur trusts that the Committee members will look at long-standing issues such as the handling of drug users by the penal system or the forced detention and medical treatment of individuals in psychiatric hospitals and institutions.

96. Regarding the criminalization of drug users, the Special Rapporteur is concerned about the situation of mothers, some of whom have been denouncing the lack of a proper response that is respectful of the rights of their children, and who remain unheard. The group "Mothers 328" (in reference to article 328 of the penal code, which punishes some drug-related offenses by up to 25 years in prison) conducted a series of hunger strikes in April and May 2018.[37] The Special Rapporteur is not aware of any new development regarding this situation.

[35] Belsat, "Minsk police detail Belsat TV contributors after press conference", 20 July 2018. Available at http://belsat.eu/en/news/minsk-police-detain-belsat-tv-contributors-after-press-conference.

[36] Viasna, "Human Rights Situation in Belarus: August 2018". Available at http://spring96.org/en/news/90728.

[37] Radio Free Europe-Radio Liberty, "Belarusian 'Mothers 328' on hunger strike over drug sentences", 4 May 2018. Available at www.rferl.org/a/belarus-mothers-328-hunger-strike-drug-sentences/29208745.html.

97. In a country that claims almost full employment, discrimination in employment and occupation occurs with respect to ethnicity, gender, disability, language, sexual orientation and gender identity and expression, and HIV-positive status.[38]

## G. Non-discrimination

98. There is still no specific anti-discrimination law that would penalize discriminatory acts against individuals on the grounds of their gender, race, ethnic group, sexual orientation, religious belief or mental or physical disability. The confusion entertained by the authorities about what is labelled as "normal" behaviour and about discrimination speaks, just as in the case of the death penalty, to a lack of political will to put an end to discriminatory laws and behaviours.

99. In the absence of specific legislation, there are no remedies against discriminatory acts. To fill in the legal vacuum, judges could have developed jurisprudence aimed at protection against discrimination, for instance, on the basis of the human rights treaties Belarus has ratified, but NGOs assess the judges as being "reluctant to consider the issue" and "lacking training" in this field.[39]

### 1. Gender

100. The Special Rapporteur has been reporting on the derogatory language used by the authorities regarding an allegedly natural division of tasks and duties based on gender.

101. On the occasion of a visit to a hospital, the President recently declared that women should have "at least three or four children".[40]

102. The adoption in February 2017 of a national action plan for gender equality is a step in the right direction. Unfortunately, the Special Rapporteur is not aware of any progress on the implementation of the plan.

### 2. Racism and hate speech

103. Belarusian law provides for aggravated sentences in the case of hate-based acts. Such legislation is rarely applied, however, and the judiciary tends to classify such acts as "hooliganism".

104. As in other countries in Central Europe and elsewhere, the Roma community has been a particular target of State officials, who use ethnic profiling and harass members of that community. Ethnic profiling was legally authorized and organized by the Ministry of Internal Affairs in internal document No. 56, which was revoked in 2017.[41]

105. The Special Rapporteur recalls that Presidential Decree No. 3 on preventing "social parasitism", and its successor measures, are also aimed at targeting members of the Roma community, for the integration of which there is no plan. Hence, not only their right to work, but also their rights to health and education, are frequently violated.

[38] United States Department of State, "Country report on human rights practices 2017 — Belarus", 20 April 2018. Available at www.state.gov/j/drl/rls/hrrpt/2017/eur/277143.htm.

[39] Alternative report by the national human rights coalition on implementation of the International Covenant on Civil and Political Rights in Belarus, presented to the Human Rights Committee at its 124th session.

[40] https://euroradio.by/ru/lukashenko-poprosil-belorusok-rozhat-minimum-tri-chetyre-rebenka.

[41] https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_E.pdf.

### 3. Religious groups

106. The Government of Belarus Plenipotentiary for Religious and Ethnic Affairs takes all decisions to grant or withhold the permission required for foreign citizens to conduct religious work in Belarus. The current holder has been in place since October 2006; he takes decisions at his own discretion. He is openly critical of the Catholic Church. In 2016, he accused unspecified Catholic priests of carrying out "destructive" work. He is also critical of Jehovah's Witness communities and has threatened to revoke State permission for those communities to exist.

107. Subject to a Council of Ministers decree in 2008, amended in July 2010, religious organizations must submit an application for permission to invite foreigners for religious purposes, and the senior religious affairs official has the sole discretion to decide whether religious work by a foreign citizen is "necessary".

108. Faith communities must have State permission to exist in order to issue an invitation to foreigners to work with them. The Plenipotentiary's office may use administrative offences as an excuse for expulsion of foreign citizens conducting religious work. The 2008 Council of Ministers decree allows the Plenipotentiary to cancel or to refuse to renew permission for foreign religious workers who have committed two or more administrative offences within a year.

109. The "expert council" attached to the Office of the Plenipotentiary for Religious and Ethnic Affairs in Minsk carries out censorship of religious materials.

110. According to Forum 18, a Norwegian human rights organization that promotes freedom of religion, two orthodox priests from the Russian Federation and two Catholic priests from Poland were denied State permission to conduct religious work in Belarus between January and June 2018.[42]

111. According to Jehovah's Witnesses, there were incidents in which authorities briefly detained Jehovah's Witnesses for proselytizing in Hrodna, Dziarzhynsk, Loeu and Smarhon. Two Jehovah's Witnesses were fined in autumn 2017 for sharing their faith and offering religious literature on the streets.[43]

### 4. Lesbian, gay, bisexual, transgender and intersex communities

112. The authorities have been handling lesbian, gay, bisexual, transgender and intersex issues through the management of fundamental rights, and by applying mutatis mutandis the same legal framework developed by the Russian Federation in this field. While same-sex relationships are not criminalized, the overwhelming restrictions on the freedom of expression and of peaceful assembly have produced a climate of fear. Recently, freedom of movement was also at stake when a citizen of the United States of America, a lesbian, gay, bisexual, transgender and intersex activist, was denied access to the country after arrival at Minsk airport. No reason was given for the denial, however, such a refusal may be based on an alleged "threat to national security, public safety, protection of morals, public health of freedoms of citizens and other persons".[44]

113. In June 2018, the Ministry of Interior accused the Government of the United Kingdom of Great Britain and Northern Ireland of trying to "create problems where they do not exist" after its embassy flew the rainbow flag to acknowledge the International Day Against Homophobia, Transphobia and Biphobia. In the same statement, the Ministry asserted that "same-sex relationships are fake".

[42] Forum 18, "State official vetoes foreign Orthodox, Catholic priests", 13 June 2018. Available at http://www.forum18.org/archive.php?article_id=2387.

[43] United States, Bureau of Democracy, Human Rights and Labor, "2017 report on international religious freedom", 29 May 2018. Available at www.state.gov/j/drl/rls/irf/2017/eur/280884.htm.

[44] www.svaboda.org/a/29404674.html.

114. It is following that statement that a Belarusian national posed in front of three government buildings holding a sign with the words "YOU are fake" and posted photographs on social media and was subsequently fined two times.

115. The Identity and Law group (Belarus) and the Eurasian Coalition on Male Health reported in their submission to the Committee against Torture that lesbian, gay, bisexual and transgender people in Belarus "often face hate crimes".[45]

116. Reports of harassment continue to emerge despite intimidation by the authorities. In May 2017, the police briefly detained and then released without charge approximately 10 individuals at a lesbian, gay, bisexual, transgender and intersex event at a Minsk nightclub.[46] Similarly, in October 2017 police raided nightclubs popular with the lesbian, gay, bisexual, transgender and intersex community, during which two clubs were shuttered and patrons were harassed, with some even being detained by police.[47]

## V. Conclusions and recommendations

117. After six years of service, the Special Rapporteur concludes that the deeply entrenched legal and administrative denial of the right to the freedoms of expression, assembly, association, life, non-discrimination, cultural development, free enterprise, free unionism and several other seminal liberties remains deeply entrenched and systemic in Belarus.

118. All violations and abuses described by the United Nations High Commissioner for Human Rights in 2011 in a report which prompted the international community to establish the mandate are still occurring, a few at a lesser intensity, while a large majority of them are still to be tackled.

119. The main reason is the authorities' wish for the maintenance of the status quo. Dire geopolitical tension engulfing the region makes their endeavours less contested by the population deprived of its human rights than it would be without the menace of violent conflict. Nevertheless, the geopolitical context is neither a legitimate reason nor a tenable one for curbing basic freedoms and rights.

120. The Government has been using a number of measures to claim progress on the human rights front, but the measures remain of a cosmetic nature in view of the findings of the Rapporteur and of other mechanisms.

121. Globally respected writer and persecuted former presidential candidate Uladzimir Niakliaeu, in an interview that the Rapporteur conducted via personal email, expressed the view that respect for human rights was incompatible with the high level of concentration of powers — legislative, executive, military, economic and cultural — assumed in the hands of the executive, who had been the incumbent for more than two decades. The Rapporteur agrees, but believes that it is precisely his near absolute power over all aspects of life in Belarus that could enable the President to provide the initial impetus to bring the human rights situation out of its frozen state. Obviously, any further or sustainable progress in the enjoyment of the rights of Belarusians cannot rely on concessions, and that stage of development could only be the result of activities of citizens themselves.

122. During his mandate, the Special Rapporteur was particularly impressed by the work of independent journalists and human rights defenders, especially women, who

[45] Alternative report to the Committee against Torture at its sixty-third session. Available at www.ecnl.net/en/file/local/1432001/1930_1525867835_int-cat-css-blr-30787-e.docx.

[46] United States Department of State, "Country report on human rights practices 2017 — Belarus".

[47] Radio Free Europe-Radio Liberty, "Belarus calls same-sex relationships 'fake' after U.K. raises rainbow flag", 21 May 2018. Available at www.rferl.org/a/belarus-calls-same-sex-relationships-fake-after-u-k-raises-rainbow-flag/29240532.html.

are at the forefront of claiming their rights. Their brave engagement with the mandate stood in contrast to the authorities' disdain for this human rights mechanism created by the international community. Progress will not arrive without the authorities' engagement with Belarusian civil society. No dialogue with the international human rights community can substitute for dialogue with the domestic one.

123. The Special Rapporteur welcomes the continuation of the mandate by the Human Rights Council. In addition to the recommendations that he made in his previous reports, he further recommends that the authorities of Belarus:

(a) **Refuse to allow the entry into force of the latest amendments to the law on mass media;**

(b) **Stop harassing independent journalists, and ensure the protection and safety of journalists;**

(c) **Allow for nationwide private media;**

(d) **Move from an authorization-based system to a notification-based system for independent media, associations, trade unions and political parties;**

(e) **Allow for public debate, including with human rights defenders and environmental activists, on issues that affect the population of Belarus;**

(f) **Release the trade unionists and political opponents currently held in custody and drop the charges against them, as they are politically motivated;**

(g) **Withdraw article 193-1 of the criminal code, which penalizes any public activity of non-registered organizations in any form, and not replace it by administrative punishments;**

(h) **Conduct a thorough review of all legislation and make it compliant with the human rights instruments to which Belarus is a party;**

(i) **Engage constructively with the Human Rights Committee during its review scheduled for the 124th session of the Committee;**

(j) **Abolish the death penalty, or at least adopt a moratorium without further delay;**

(k) **Establish a national human rights institution that is compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) of independent status and inclusiveness towards civil society;**

(l) **Institutionalize engagement with civil society organizations in working towards the fulfilment of the country's human rights obligations, including by implementing the recommendations made by the Human Rights Council and the Committee against Torture in 2018;**

(m) **Develop the inter-agency action plan by involving non-governmental human rights organizations, even those which are not accredited;**

(n) **Stop harassing human rights defenders and other members of civil society, protect them and publicly acknowledge their positive role and engage with their work, in accordance with General Assembly resolution 72/247, on the twentieth anniversary of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.**